

IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR
S.B. CIVIL WRIT PETITION NO.689/07
Mohammad Iqbal Saif Vs. The Rent Tribunal
Jaipur & Anr.

Date of order : 6/12/2007.

HON'BLE MR.JUSTICE MOHAMMAD RAFIQ

Shri O.P. Mishra for the petitioners.
Shri Anurag Sharma for the respondent.

This writ petition has been filed against the order dated 16.1.2007, whereby the application of the defendant-petitioners for filing written statements, has been rejected.

Learned counsel for the petitioners has argued that in the suit for eviction of the defendant-petitioners, their service was not properly affected and the Court proceeded ex-parte against them. When the petitioners came to know about the same, they filed application for setting aside the ex-parte proceedings

which was allowed by the Court by order dated 27.10.2006 and case was fixed for filing their written statement on 16.1.2007. For the reason that mother of the petitioner was seriously ill and the petitioner had to rush to Tonk to look after her, an application was filed on 16.1.2007 praying for some time to enable the petitioner to file reply. Learned counsel for the petitioners argued that during the pendency of the writ petition, the original writ petitioner expired and now the matter is being prosecuted by his legal heirs.

Learned counsel for the respondent opposed the writ petition and argued that already sufficient time has been allowed to the petitioners and now no more time can be granted for filing of the written statement.

Having heard the learned counsel for

the parties and perused the material forming part of the record, I find that in the present case, the suit was initially proceeded ex-parte against the petitioner. He filed application for setting aside the ex-parte proceedings on 28.7.2006, which was allowed by the trial court on 27.10.2006 on payment of cost of Rs.500/- and thereafter the matter was listed on 30.11.2006 for further proceedings and it was on 30.11.2006 that the defendant paid to the plaintiff-respondent the cost of Rs.500/- and received from him copy of the petition and documents. The matter was then adjourned to 5.1.2007 for filing written statement, on which date it was adjourned to 16.1.2007, which is the date on which the impugned order was passed. The petitioner though could not file written statement in time but his application was rejected by the trial

court by order dated 16.1.2007. The order rejecting his application does not contain any reason whatsoever. Soon upon closure of the written statement of the defendant-petitioners the matter was ordered to be fixed for final hearing.

In the peculiar facts of the fact, I find that if the written statement is not allowed to be filed by the petitioners, the very purpose of setting aside the ex-parte proceedings is frustrated and it will render the petitioners defend less.

I therefore while setting aside the order dated 16.1.2007 direct that in case the petitioners file written statement within 15 days from the date fixed before the trial court and pay to the plaintiff-respondent a sum of Rs.500/- as cost, the written statement would be allowed to be taken on record.

The writ petition is partly allowed

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with the above observations.

(MOHAMMAD RAFIQ), J.

RS/